



Comptroller General  
of the United States

Washington, D.C. 20548

93975

## Decision

**Matter of:** Telecom Systems Services, Inc.

**File:** B-251702.2

**Date:** May 7, 1993

Sam Zalman Gdanski, Esq., for the protester.  
James J. Jasinski, Department of Justice, for the agency.  
Charles W. Morrow, Esq., and James A. Spangenberg, Esq.,  
Office of the General Counsel, GAO, participated in the  
preparation of the decision.

### DIGEST

Proposal was properly excluded from the competitive range where it failed to meet a mandatory solicitation requirement, notwithstanding repeated discussions on the requirement, and where the proposal was only minimally acceptable under the most important evaluation criterion.

### DECISION

Telecom Systems Services, Inc. protests the exclusion of its proposal from the competitive range under request for proposals (RFP) No. 6238, issued by the Department of Justice, Federal Bureau of Investigation (FBI), for an "Electronic Private Automatic Branch Exchange" (EPABX).<sup>1</sup>

We deny the protest.

The RFP was issued on August 7, 1992, to procure the installation and maintenance of an EPABX and ancillary equipment for the FBI's San Francisco field office under a firm, fixed-price contract. The RFP required the EPABX to include a fully integrated Voice Messaging System (VMS) stand alone processor that possesses distributed processing and redundant shadow hard disk database capabilities.

Award under the RFP was to be made to the offeror whose proposal was determined acceptable and in the best interest of the government, price and other factors considered. The

<sup>1</sup>This EPABX is a telephone system with attendant switching equipment, consoles, station instruments, power backup, message detail recording, and voice mail.

most important evaluation criterion was "contractor maintenance and service support," under which, among other things, offerors were evaluated for their capability of maintaining a minimum of three of the proposed EPABX systems in San Francisco and providing adequate and available full time, factory trained, maintenance technicians assigned in San Francisco. The "technical proposal" was the next most important criterion, which provided for offerors' proposals to be rated on their ability to satisfy the technical and operational requirements of the specifications. The least important criterion was price.

On September 30, the FBI received nine proposals in response to the RFP, including Telecom's. Telecom proposed a Rolm system and took exception to the VMS redundant shadow hard disk requirement, stating that the Rolm system lacked a redundant shadow hard disk, but that information would be stored directly on the hard drive with a backup floppy disk providing a redundant database.<sup>2</sup> With regard to this and other proposal deficiencies, the FBI conducted written discussions with Telecom on October 22, November 9, and November 18.

Eventually, Telecom was notified in a November 24 letter that its proposal was technically unacceptable for a variety of reasons, including the failure to meet the mandatory redundant shadow hard disk requirement. In that letter, Telecom was requested to verify that it would not meet the redundancy requirement or amend its response, and that the failure to meet all mandatory requirements would render Telecom's proposal technically unacceptable.

On November 30, Telecom responded that it was revising its proposal to use the Octel VMS, which it asserted would comply with the redundant shadow hard disk requirement. Elsewhere in this response, however, Telecom specified that the redundant requirement would be met by writing "duplicate information to the same hard disk."

In addition, notwithstanding various discussion questions, Telecom's proposal provided only a minimum number of factory trained maintenance technicians located in San Francisco--less than recommended in the RFP. Also, Telecom had installed and maintained only a single EPABX system in San Francisco, notwithstanding the RFP's requirement for "demonstration/documentation" of the offerors' capability of

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<sup>2</sup>In response to the FBI's inquiry as to whether Telecom would comply with the redundant shadow hard-disk requirement, Telecom reiterated on November 2 that the capability was not available on the Rolm system.

installing and maintaining a minimum of three systems in San Francisco.

On December 2, the FBI completed its technical evaluation and excluded Telecom's proposal from the competitive range. The FBI found Telecom's proposal was technically unacceptable for failing to meet the minimum VMS requirement for a redundant shadow hard disk and because of its low rating under the most important "contractor maintenance and service support" evaluation factor. Four proposals remained in the competitive range. The FBI requested and received best and final offers (BAFO) from the competitive range offerors on December 4. After evaluating BAFOs, the FBI made award to Fujitsu on December 9. Telecom's protest followed.

Telecom maintains that the FBI improperly eliminated its proposal from the competitive range. For example, Telecom contends that the FBI improperly determined that its VMS system did not meet the redundant shadow hard disk requirement, since it proposed the Octel VMS, which was among the acceptable systems proposed in the competitive range proposals. Telecom also asserts that the FBI improperly considered only its EPABX system in San Francisco under the "contractor maintenance and service support" criterion, even though Telecom has installed other EPABX systems in California. Telecom also argues that even though it proposed less than the recommended number of maintenance technicians, this was not prohibited by the RFP.

The evaluation of proposals and the resulting determination of whether a firm is within the competitive range is a matter within the discretion of the contracting agency, since the agency is responsible for defining its needs and the best method of accommodating them. OPSYS, Inc., B-248260, Aug. 6, 1992, 92-2 CPD ¶ 83. In cases where an agency's technical evaluation is challenged, we will not reevaluate the proposals; our review is limited to ensuring that the agency's evaluation is reasonable and otherwise not in violation of procurement statutes and regulations. Id. Here, the record shows the FBI's evaluation of Telecom's proposal and its elimination from the competitive range were reasonable.

First, Telecom's proposed technical solution to the RFP's redundant shadow hard disk requirement was reasonably found to be technically unacceptable. The meaning and materiality of this requirement was not only made clear during the repeated discussions, but in several RFP amendments. For

example, amendment No. 2 contained the following question and answer:

"Is the FBI requesting the [VMS] to be equipped with a redundant shadow hard-disk or just the capability of providing redundant shadow hard-disk.

"Answer: The FBI requires the proposed Voice Messaging System be equipped with a redundant shadow hard-disk."

Amendment No. 4 stated the following:

"1. (a) [P]lease define redundant shadow hard-disk database.

(b) Does this mean for every message that is written to hard disk it is also written to a second disk?

(c) Does the FBI want all messages, names & greetings, and base system programming to be redundant shadow hard disk stored?

"Answer: (a) A redundant shadow hard-disk is defined as a duplicate hard disk with its data base configured to store all information in a perpetual current state in mirror image form that is contained in the main voice messaging system hard-disk database. The primary function of the shadow hard-disk is to maintain all voice messaging system operations in the event of a main hard-disk failure.

(b) Yes

(c) Yes."

Thus, it was clear that the RFP called for a VMS system equipped with a separate redundant shadow hard disk. Notwithstanding the clarity and materiality of this requirement, Telecom declined to change its offered VMS until it responded to the agency's November 24 discussion letter and ultimatum, whereupon Telecom proposed the Octel VMS system. Although in a blanket statement Telecom asserted that its system "will comply" with the redundant

shadow hard disk requirement, Telecom's revised proposal also stated:

"The proposed system is equipped with a redundant shadow hard disk. The Octel system is a computer-controlled voice processing system. The proposed system will provide redundancy for the system information and mailbox profiles. Please note that it writes duplicate information to the same hard disk, however, it is redundant. It will provide redundancy for each system drive purchased. Only one has been included in the proposal."

A reasonable reading of this response is that Telecom's offered Octel VMS system still does not meet the RFP's mandatory requirement for a redundant shadow hard disk as defined in the RFP. Although Telecom suggested that the Octel VMS was capable of meeting the requirement,<sup>3</sup> its proposal did not reflect this capability, even though the agency had conducted repeated discussions on this point, wherein Telecom was admonished that the failure to meet all mandatory requirements would render its proposal technically unacceptable. A contracting agency need not reopen discussions to resolve a technical deficiency first introduced in revisions to an offeror's proposal during discussions. Swiftships, Inc., B-235858, Oct. 13, 1989, 89-2 CPD ¶ 349.

With regard to Telecom's assertions regarding its low rating under the contractor maintenance and service support evaluation, the FBI reasonably determined Telecom's proposal only minimally met the RFP's requirements and deserved a low rating.<sup>4</sup> For example, while the RFP recommended that offerors identify a minimum of seven factory certified technicians in San Francisco, Telecom only proposed six factory trained technicians in San Francisco. In addition, the agency reasonably downgraded Telecom because it had installed only a single EPABX system in San Francisco, since the evaluation criterion made clear that a greater demonstrated capability in San Francisco was desired.


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<sup>3</sup>We understand that the standard Octel VMS system as proposed by Telecom is capable of being upgraded to satisfy the requirement for a redundant shadow hard disk.

<sup>4</sup>Contrary to the protester's assertions, this is not a matter of responsibility, but was directly related to the RFP technical evaluation criteria.

In sum, the FBI reasonably excluded Telecom's proposal from the competitive range, since its system failed to meet at least one material requirement and was only minimally acceptable under the most important evaluation criterion.<sup>5</sup>

The protest is denied.

  
*for* James F. Hinchman  
General Counsel

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<sup>5</sup>The FBI raised other instances where Telecom's proposal was deficient. However, we need not address these points because Telecom's proposal was reasonably eliminated from the competitive range based on the deficiencies herein discussed.